

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: Gero Offer
Appl. No.: 09/899,435
Conf. No.: 3369
Filed: July 5, 2001
Title: TELECOMMUNICATION NETWORK, METHOD OF OPERATING SAME,
AND TERMINAL APPARATUS THEREIN
Art Unit: 2153
Examiner: Philip J. Chea
Docket No.: 112740-257

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' SUPPLEMENTAL APPEAL BRIEF

Sir:

Applicants submit the supplemental Appeal Brief in response to the Notification of Non-Compliant Appeal Brief dated September 12, 2006. The original Appeal Brief was filed in support of the Notice of Appeal filed on May 22, 2006. This Appeal is taken from the Final Rejection in the Office Action dated February 22, 2006.

Applicants note that, due to the size of the exhibits that have already been accepted by the USPTO in the original brief, the present filing will not attach the same exhibits.

I. REAL PARTY IN INTEREST

The real party in interest for the above-identified patent application on appeal is Siemens Aktiengesellschaft, by virtue of an Assignment dated September 12, 2001 and recorded at the United States Patent and Trademark Office at reel 012241, frame 0293.

II. RELATED APPEALS AND INTERFERENCES

Appellants' legal representative and the Assignee of the above-identified patent application do not know of any prior or pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision with respect to the above-identified Appeal.

III. STATUS OF CLAIMS

Claims 1-25 are pending in the above-identified patent application. Claims 1-25 stand rejected. Therefore, Claims 1-25 are being appealed in this Brief. A copy of the appealed claims is included in the Claims Appendix.

IV. STATUS OF AMENDMENTS

A Final Office Action was mailed on February 22, 2006. Appellants filed a Pre-Appeal Brief Conference Request on May 22, 2006. After reviewing the rejection, the pre-appeal conference could not agree to a resolution and forwarded the application to this Board via the decision dated August 1, 2006. A copy of the Final Office Action is attached as **Exhibit A** in the Evidence Appendix.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A summary of the invention by way of reference to specification and/or figures for each of the independent claims is provided as follows:

Independent Claim 1 is directed to a telecommunication network that includes a central server (S) of an access or service provider, where the central server includes an interrogation part (3) for interrogating hardware and software configurations of a plurality of terminal devices ([0025]). The server also includes a software transmitting part [0012, 0017] for loading software and/or data that is customized according to the detected hardware and software configuration one of the plurality of terminal devices [0029]. A plurality of terminal devices include a response transmitting part for transmitting a configuration code [0026, 0032] identifying the respective hardware and software configuration to the central server in response to an inquiry by the interrogation part. Each of the plurality of terminal devices also including a software receiving part for receiving and internally storing at least one of the transferred software and data, where the interrogation part and the response transmitting part interrogate the respective hardware and software configuration and to transmit the respective configuration code when the terminal device logs onto the telecommunication network, or when predetermined times or time intervals occur [0011, 0033; FIG. 1]. Distributed control parts, which are distributed in both the central server and the plurality of terminal devices, implement an interactive control over the software transmitting part, and for the interactive specifying of a charging mode for at least one of downloaded software and downloaded data [0017, 0020, 0026-27].

Independent Claim 15 is directed to a method of operating a telecommunication network having a plurality of terminal devices of users, each with a predetermined hardware and software configuration [0029], and a central server (S) of an access or service provider. The claimed method includes the steps of interrogating the current hardware and software configurations of one of the plurality of terminal devices one of (1) a time during logon onto the telecommunication network, (2) predetermined times, and (3) time intervals, and transmitting the current hardware and software configuration of the respective terminal device to the central server [0025-26, 0029, 0032-33]. The method further includes the steps of setting up in the central server and transmitting to the respective terminal device, based on the respectively transmitted hardware and software configuration, offer information for a user of a respective

terminal device [0012, 0025-26]. An interactive menu in the terminal device displays the offer information together with one of a select and a reject request, one of a request and a reject signal of the user which is generated by the user being registered [0028, 0030, 0035]. The offer information is then transmitted together with the offer information, and charging mode signals to the respective terminal device, where the charging mode signals are displayed in the context of the interactive menu for selection by the user, and registering a charging mode in the central server in response to a selection made by the user [0025-26, 0030]. At least one of software and data that are suitable for the respective terminal device and that are not already present at the respective terminal device are downloaded onto the respective terminal device by the central server, in response to the registered one of the request and the reject signals [0027-29].

Independent Claim 21 is directed to terminal device for use in a telecommunication network having a plurality of terminal devices of users, each having a predetermined hardware and software configuration, and a central server of an accessor service provider, where the terminal device includes a response transmitting part for transmitting a configuration code that identifies a currently implemented hardware and software configuration to the central server in response to an interrogation by the central server [0025-26, 0029, 0032]. Distributed control parts implement an interactive control of the downloading of software and/or data from the central server [0017, 0035]. A charging mode display part displays at least one available charging mode for one of offered and selected software and data, where a charging mode confirmation part specifies the charging mode [0031-32].

Although specification citations are given in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the Brief. There is no intention to suggest in any way that the terms of the claims are limited to the examples in the specification. As demonstrated by the reference numerals and citations, the claims are fully supported by the specification as required by law. However, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology as is done here to comply with rule 1.192(c) does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In

short, the reference numerals and specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-4, 14, 21, 22 and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Kobata* (U.S. Patent No. 4,540,585) in view of *Nakagawa* (U.S. Patent 5,835,911);

Claims 5-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Kobata* (U.S. Patent No. 4,540,585) in view of *Nakagawa* (U.S. Patent 5,835,911), and further in view of *Chen et al.* (U.S. 5,797,016);

Claims 7, 12, 13, and 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Kobata* (U.S. Patent No. 4,540,585) in view of *Nakagawa* (U.S. Patent 5,835,911), and further in view of *Valentine* (U.S. 6,018,654);

Claim 8 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Kobata* (U.S. Patent No. 4,540,585) in view of *Nakagawa* (U.S. Patent 5,835,911), and further in view of *Pepe et al.* (U.S. Patent 5,742,668);

Claims 9-11 and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Kobata* (U.S. Patent No. 4,540,585) in view of *Nakagawa* (U.S. Patent 5,835,911), and further in view of *Shear* (U.S. Patent 4,977,594);

Claims 15 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Kobata* (U.S. Patent No. 4,540,585) in view of *Shah* (U.S. Patent 6,029,065) and further in view of *Nakagawa* (U.S. Patent 5,835,911);

Claims 19 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Kobata* (U.S. Patent No. 4,540,585) in view of *Shah* (U.S. Patent 6,029,065) in view of *Nakagawa* (U.S. Patent 5,835,011) and further in view of *Shear* (U.S. Patent 4,977,594). A copy of *Kobata*, *Nakagawa*, *Chen*, *Valentine*, *Pepe*, *Shear* and *Shah* are attached herewith as **Exhibits B, C, D, E, F, G and H**, respectively.

VII. ARGUMENT

A. LEGAL STANDARDS

1. Obviousness under 35 U.S.C. § 103

The Federal Circuit has held that the legal determination of an obviousness rejection under 35 U.S.C. § 103 is:

whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made...The foundational facts for the prima facie case of obviousness are: (1) the scope and content of the prior art; (2) the difference between the prior art and the claimed invention; and (3) the level of ordinary skill in the art...Moreover, objective indicia such as commercial success and long felt need are relevant to the determination of obviousness...Thus, each obviousness determination rests on its own facts.

In re Mayne, 41 U.S.P.Q. 2d 1451, 1453 (Fed. Cir. 1997).

In making this determination, the Patent Office has the initial burden of proving a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q. 2d 1955, 1956 (Fed. Cir. 1993). This burden may only be overcome “by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings.” *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). “If the examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent.” *In re Oetiker*, 24 U.S.P.Q. 2d 1443, 1444 (Fed. Cir. 1992).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference or references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 837 F.2d 1071, 5, U.S.P.Q.2d 1596 (Fed. Cir. 1988). Second there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Finally, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q., 580 (CCPA 1974).

Further, the Federal Circuit has held that it is “impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the

claimed invention is rendered obvious.” *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). “One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention” *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Moreover, the Federal Circuit has held that “obvious to try” is not the proper standard under 35 U.S.C. §103. *Ex parte Goldgaber*, 41 U.S.P.Q.2d 1172, 1177 (Fed. Cir. 1996). “An-obvious-to-try situation exists when a general disclosure may pique the scientist curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued.” *In re Eli Lilly and Co.*, 14 U.S.P.Q.2d 1741, 1743 (Fed. Cir. 1990).

Of course, references must be considered as a whole and those portions teaching against or away from the claimed invention must be considered. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve Inc.*, 796 F.2d 443 (Fed. Cir. 1986). “A prior art reference may be considered to teach away when a person of ordinary skill, upon reading the reference would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the Applicant.” *Monarch Knitting Machinery Corp. v. Fukuhara Industrial Trading Co., Ltd.*, 139 F.3d 1009 (Fed. Cir. 1998), quoting, *In re Gurley*, 27 F.3d 551 (Fed. Cir. 1994).

B. THE CLAIMED INVENTION – CLAIM 1

Independent Claim 1 recites, in part, a central server having an interrogation part for interrogating hardware and software configurations of a plurality of terminal devices and a plurality of terminal devices including a response transmitting part for transmitting a configuration code identifying the respective hardware and software configuration to the central server in response to an inquiry by the interrogation part. The interrogation part and the response transmitting part interrogate the respective hardware and software configuration and transmit the respective configuration code when at least one of the terminal device logs onto the telecommunication network, predetermined times occur, and predetermined time intervals occur. Distributed control parts are distributed in both the central server and the plurality of terminal devices, where the distributed control parts implement an interactive control over the software

transmitting part, and being constructed for the interactive specifying of a charging mode for at least one of downloaded software and downloaded data.

C. THE REJECTION OF CLAIM 1 UNDER 35 U.S.C. §103(A) TO KOBATA AND NAKAGAWA SHOULD BE REVERSED BECAUSE THE PATENT OFFICE HAS NOT ESTABLISHED A PRIMA FACIE CASE OF OBVIOUSNESS

1. One having ordinary skill in the art would not be motivated to combine Kobata with Nakagawa in the manner suggested in the Final Office Action to arrive at the present claims

Appellants respectfully submit that the examiner has not taken into consideration the teachings *as a whole* in the cited prior art, and has further engaged in impermissible hindsight in formulating this rejection. As this Board is aware, the Federal Circuit has held that it is “impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). Indeed, references must be considered as a whole and those portions teaching against or away from the claimed invention must be considered. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve Inc.*, 796 F.2d 443 (Fed. Cir. 1986).

The entire disclosure of *Kobata* is directed to a “market delivery system,” which is essentially advertisement delivery software that delivers advertisements or other “targeted” data from a server to users based on information and demographics collected from those users (col. 4, lines 22-25). *Kobata* discloses a system where software is first provided to each user in the network, and each user must execute - and permit - the software to transmit information about their computers and/or their software to the provider 10 (col. 3, lines 52-60; col. 4, lines 43-56; see claim 1: “when the client system executes the software”). The provider then receives an aggregate of information regarding various users’ hardware and software physically residing on their computers (col. 4, line 57 – col. 5, line 5). Having this information, the provider can then tailor advertisements directed to users, and send advertisements that would be optimized by the software residing on a user’s computer (e.g., PDF vs. MPEG), as well as the hardware residing therein (e.g., sound cards, video cards) (see col. 5, lines 1-5, 18-21). The configuration in *Kobata* is clearly disclosed as a “push” system, where, once a user has subscribed to the advertising service and the information from the users is initially received, the advertisements will begin to flow to the users from the server without further interaction (col. 5, lines 6-18, 33-

37). Like most every “push” system, such transmissions are transparent to the user, and are intended to be used with minimal interaction (col. 4, lines 43-49).

Along a completely different line of software networking, *Nakagawa* teaches a system and method where an application program on a user's computer detects when software subject to maintenance is activated and transmits an inquiry over the network to the software vendor's computer for information on the current version of the software. The server program compares data in the inquiry with data relating to the latest version of the software and returns update instruction information and updated software if appropriate (see Abstract). Thus, while the software and hardware information concerning a user's computer is initially sent to the software provider, the subsequent updates are premised only upon the software version residing on a user's computer (col. 1, lines 13-19; col. 8, lines 26-36). *Nakagawa* further teaches an “access qualification level” for customers (col. 67, lines 50-60) where customers are offered various functionalities, based on their qualification level. Each qualification level assigned by the seller to the software allows users, depending on their qualification, to access different software at different levels of access (payment type, time of payment, etc. – col. 7, lines 39-48).

It is apparent to Applicant that there is no teaching suggestion or motivation for one having ordinary skill in the art to combine *Kobata* with *Nakagawa*. As discussed above, *Kobata* is a system in which advertisements are targeted to users that choose to volunteer their PC hardware and software information so that an optimal advertising campaign can be formulated for them by advertisers – no software is being “updated”. Furthermore, the “push” configuration makes it so that users transparently receive advertisements. Applicant submits *Kobata* teaches away from the presently claimed features, and further teaches away from *Nakagawa*. It is not understood why an interactive control would be implemented in *Kobata* to specify a “charging mode” mode for the downloaded advertisements. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). To suggest that users in *Kobata* would interactively pay the advertiser to receive advertisements misinterprets the teaching in the reference and of “push” systems in general, and runs contrary to common sense. Also, the access qualification in *Nakagawa* goes to upgrading and purchasing software on a networked user system so that buyers and sellers may effectively negotiate these transactions. In *Kobata*, there is no software to

“upgrade,” but only content that is provided to the users (col. 4, lines 22-25, 34-42). Similarly, it is not understood how incorporating the access levels of *Nakagawa*, which restricts user access to software, would be feasible in the advertising-model system of *Kobata*. Again, it wouldn’t make sense to have advertisers create restrictions to their own advertisements on putative consumers. Because of at least these differences, Appellants respectfully submit that the Examiner has failed to provide a sufficient basis or motivation for combining the cited references. Consequently, in view of the portions of the cited references teaching away each other and from the present claims, one having ordinary skill in the art would not be motivated to modify or combine the cited references to arrive at the present claims.

2. *Kobata* and *Nakagawa*, alone or in combination, fail to disclose or suggest all of the recited feature of claim 1

Appellants respectfully submit that, even if combinable, the cited references do not disclose or suggest all of the claimed elements. For example, claim 1 recites “a central server having an interrogation part for interrogating hardware and software configurations of a plurality of terminal devices” where the terminal devices have “a response transmitting part for transmitting a configuration code identifying the respective hardware and software configuration to the central server in response to an inquiry by the interrogation part.”

Kobata discloses a client software package (64) that is first installed at a client’s computer. The client then subsequently executes the software, whereupon the software transmits the client’s software/hardware configuration (col. 4, lines 57-67). Thus, the corresponding data transfer is initiated solely on the client’s side (col. 3, lines 6-9, 52-60), and cannot be considered a result of an “interrogation,” either in the technical or conventional sense. There is no “response” being initiated by the client. Moreover, the response is not in the form of a configuration code, as recited in the present claims.

Nakagawa discloses a client sending information about a software version in response to a query, however, *Nakagawa* does not disclose a software and hardware configuration being transmitted, and also does not disclose a configuration code.

Also, claim 1 recites that the interrogation part and the response transmitting part interrogate the hardware and software configuration and transmit the respective configuration code when at least one of the terminal device (1) logs onto the telecommunication network, (2) predetermined times occur, and (3) predetermined time intervals occur. *Kobata* clearly fails to teach this configuration.

Moreover, claim 1 recites distributed control parts, which are distributed in both the central server and the plurality of terminal devices, where the distributed control parts implement an interactive control over the software transmitting part, and specifying a charging mode for at least one of downloaded software and downloaded data. As discussed above, *Kobata* does not have any control parts distributed to implement interactive control for charging modes. Regarding *Nakagawa*, the reference teaches that the client's program directs a query to a software provider's server over a network (col. 1, lines 13-19; col. 8, lines 26-36). The "access qualification level" disclosed in *Nakagawa* only refers to control being implemented on the server side only (col. 67, lines 50-60). In other words, the access qualification levels in *Nakagawa* are a indicator of user rights that are defined by the seller on the server, as opposed to the server and the terminal devices – interactive control of the software transmission is controlled on the server side exclusively (see also col. 67, lines 39-48).

As shown above, the cited references fail to disclose or suggest unique aspects of the present claims. Though one may argue that each piece is an independent element, each element is necessary and makes this inventive aspect unique. Consequently, the above-cited references fail to disclose or suggest while teaching away from the above unique aspects of the present claims. As a result of the above discussion, Appellants have met the burden of proof to show that *Kobata* and *Nakagawa* fail to render obvious the present claims. Appellants respectfully submit that the Examiner has improperly applied hindsight reasoning by selectively piecing together teachings of each of the references in an attempt to recreate what the claimed invention discloses. As the Federal Circuit explained, one cannot use "hindsight reconstruction to pick and choose among isolated disclosures in the prior art" to re-create the claimed invention. *In re Fine*, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988). Further, it is "impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir.

1992). Accordingly, Appellants respectfully submit that Claims 1-14 are novel, nonobvious and distinguishable from the cited references and are in condition for allowance.

D. THE REJECTION OF CLAIM 15 UNDER 35 U.S.C. §103(A) TO *KOBATA, SHAH* AND *NAKAGAWA* SHOULD BE REVERSED BECAUSE THE PATENT OFFICE HAS NOT ESTABLISHED A *PRIMA FACIE* CASE OF OBVIOUSNESS

1. One having ordinary skill in the art would not be motivated to combine *Kobata* with *Shah* and *Nakagawa* in the manner suggested in the Final Office Action to arrive at the present claims

For the same reasons recited above in connection with claim 1, there is no teaching, suggestion or motivation for one having ordinary skill in the art to combine these reference in the manner suggested in the Office Action. With regard to *Shah*, an interactive menu is provided for users that wish to accept or reject features available for a base station in a mobile telecommunication network (col. 9, lines 54-61). However, the Office Action doesn't reconcile how the signaling and network considerations for an interactive menu on the wireless network of *Shah* (i.e., paging channel/access channel) would be incorporated into the line-based system of *Kobata*. Under *Shah*, when a mobile user visits a network, registration procedures are used to enable the visited network to identify the mobile unit network connection and paging purposes, and the mobile station's home network, for billing purposes. Once registered, the base station will download information to the mobile station which will notify the mobile station of which network features are available and how they may be accessed in the local network (col. 3, lines 31-40). However none of the system requirements of *Shah* – i.e., home location registers, base stations, mobile registration, etc. – is remotely applicable to the teaching of *Kobata*. Furthermore, as in *Nakagawa*, it is not explained how or why an interactive menu would be needed for the “push” system of *Kobata*. Again, Appellant respectfully submits this rejection, as in claim 1, was formulated through the use of impermissible hindsight, and without considering each reference as a whole when applying it to the presently claimed features.

2. *Kobata, Shah and Nakagawa*, alone or in combination, fail to disclose or suggest all of the recited feature of claim 15

For the same reasons recited above in connection with claim 1, *Kobata, Shah* and *Nakagawa* fail to teach or suggest the recited features of claim 15. Accordingly, Appellants have met the burden of proof to show that *Kobata, Shah* and *Nakagawa* fail to render obvious the present claims. Appellants respectfully submit that the Examiner has also improperly applied hindsight reasoning by selectively piecing together teachings of each of the references in an attempt to recreate what the claimed invention discloses. As such, Appellants respectfully submit that Claims 15-25 are novel, nonobvious and distinguishable from the cited references and are in condition for allowance.

VIII. CONCLUSION

Appellants respectfully submit that the Patent Office has failed to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a) with respect to the rejections of Claims 1-25. Accordingly, Appellants respectfully submit that the obviousness rejections are erroneous in law and in fact and should therefore be reversed by this Board. The Director is authorized to charge any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112740-257 on the account statement.

Respectfully submitted,

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CLAIMS APPENDIX
PENDING CLAIMS ON APPEAL OF
U.S. PATENT APPLICATION SERIAL NO. 09/899,435

Claim 1. A telecommunication network, comprising:

a central server of an access or service provider, the central server having an interrogation part for interrogating hardware and software configurations of a plurality of terminal devices and a software transmitting part for loading at least one of software and data that is customized to the respectively detected hardware and software configuration onto one of the plurality of terminal devices;

a plurality of terminal devices, each with a predetermined hardware and software configuration, each of the plurality of terminal devices including a response transmitting part for transmitting a configuration code identifying the respective hardware and software configuration to the central server in response to an inquiry by the interrogation part, each of the plurality of terminal devices also including a software receiving part for receiving and internally storing at least one of the transferred software and data, the interrogation part and the response transmitting part being designed to interrogate the respective hardware and software configuration and to transmit the respective configuration code when at least one of the terminal device logs onto the telecommunication network, predetermined times occur, and predetermined time intervals occur; and

distributed control parts, which are distributed in both the central server and the plurality of terminal devices, the distributed control parts implementing an interactive control over the software transmitting part, and being constructed for the interactive specifying of a charging mode for at least one of downloaded software and downloaded data.

Claim 2. A telecommunications network as claimed in claim 1, further comprising: an offer memory in the central server to which the distributed control parts are connected, the offer memory being addressable via the configuration code and having a plurality of memory areas, in each of the memory areas at least one of a software and a data offer which is tuned to a separate hardware and software configuration is listed; and

wherein the distributed control parts include an offer transmitting part in the central server, the offer transmitting part for transferring contents of the respectively addressed offer memory area to the respective terminal device that has transmitted a configuration code, a transmission initiation unit in the central server, the transmission initiation unit for activating the transmitted part for loading at least one of software and data from at least one of the tuned software and the data offer, an offer display part in each of the plurality of terminal devices for displaying the memory contents of the respectively addressed offer memory area, and a requesting part in each of the plurality of terminal devices for selecting offered software and data for loading onto the terminal device, which send a request signal for at least one of desired software and data and a reject signal for unwanted software and data to the transmission initiation unit of the central server.

Claim 3. A telecommunication network as claimed in claim 2, wherein the central server further includes a reject signal storage area for terminal-device-specific storage of reject signals in association with the transmitted software and data offers, such that the reject signal storage area is allocated to the offer memory on an output side as filter so that software and data offers which are quit via a reject signal are not repeated to a same user.

Claim 4. A telecommunication network as claimed in claim 3, further comprising:
a charging mode memory in the central server to which the distributed control parts are connected, the charging mode memory being allocated to the offer memory and having at least one charging mode stored for at least one of each software offer and each data offer; and
wherein the distributed control parts include a charging mode transmitting part in the central server connected to the charging mode memory for responding to the reception of one of a configuration code and a request signal, a charging mode display part in each of the plurality of terminal devices for displaying the at least one charging mode for at least one of the offered and the selected software and the offered and the selected data, and a charging mode confirmation part in each of the plurality of terminal devices for specifying the charging mode.

Claim 5. A telecommunication network as claimed in claim 1, wherein the central server further includes a terminal device operating data memory with a plurality of memory areas for the terminal-device-specific data storage of at least one of software and data that are implemented in the plurality of terminal devices, and operating data receiving and transmitting parts connected to the terminal device operating data memory for transferring the software and data from and to the plurality of terminal devices, and wherein each of the plurality of terminal devices further includes additional operating data transmitting and receiving parts for transferring the software and data to and from the central server.

Claim 6. A telecommunication network as claimed in claim 5, wherein the operating data receiving and transmitting parts of both the central server and the plurality of terminal devices are so connected to the distributed control parts for implementing the interactive

control that the data storage in the central server occurs only upon the selection of a corresponding offer by a user of the terminal device.

Claim 7. A telecommunication network as claimed in claim 1, wherein the distributed control parts are formed as network-specific signaling parts on the basis of at least one of SIM cards, firmware, and applets/scripts.

Claim 8. A telecommunication network as claimed in claim 1, wherein the central server acts as an intermediate station in the loading of the software and the data onto a first of the plurality of terminal devices by one of a second of the plurality of terminal devices in the telecommunication network and a data terminal device in a data network which is linked to the telecommunication network.

Claim 9. A telecommunication network as claimed in claim 1, wherein the central server further includes a validation storage unit for storing at least one of validity data and authorization data in association with predetermined configuration codes as well as a comparison unit that is connected to the storage unit which compares the configuration codes that are transmitted by the plurality of terminal devices to stored configuration codes for the purpose of determining at least one of the validity of software stocks and data stocks and the usage authorization of a respective user.

Claim 10. A telecommunication network as claimed in claim 9, wherein the software stocks and the data stocks that are one of implemented in the plurality of terminal devices and

downloaded into the plurality of terminal devices include application counter elements, the central server further including an arithmetic evaluation unit for evaluating the counter statuses of the application counter elements at one of predetermined times, time intervals, and times when the relevant terminal device logs onto the telecommunication network, for the purpose of achieving a use-based charging mode.

Claim 11. A telecommunication network as claimed in claim 10, wherein the central server includes an auxiliary information transmission unit which is connected to at least one of the comparison unit and the arithmetic evaluation unit for transmitting messages to the respective terminal device relating to at least one of the validity of implemented software, the usage authorization, and the application counter status for the respective user, the plurality of terminal devices including auxiliary information reception and display units for receiving and displaying the messages.

Claim 12. A telecommunication network as claimed in claim 1, wherein the software that can be downloaded onto the plurality of terminal devices includes at least one of software components and data for implementing non-network-bound auxiliary functions of the plurality of terminal devices.

Claim 13. A telecommunication network as claimed in claim 1, wherein the software and data that can be downloaded onto the plurality of terminal devices includes software components and data for implementing auxiliary services that are available in one of the

telecommunication network and a data network that is connected to the telecommunication network.

Claim 14. A telecommunication network as claimed in claim 1, wherein the software and data that can be downloaded onto the plurality of terminal devices include update software and update data for updating software and data stocks that are stored in the plurality of terminal devices.

Claim 15. A method of operating a telecommunication network having a plurality of terminal devices of users, each with a predetermined hardware and software configuration, and a central server of an access or service provider, the method comprising the steps of:

interrogating the current hardware and software configurations of one of the plurality of terminal devices in an interrogation step at one of a time during logon onto the telecommunication network, predetermined times, and time intervals;

transmitting, in a transmission step, the current hardware and software configuration of the respective terminal device to the central server;

setting up in the central server and transmitting to the respective terminal device, based on the respectively transmitted hardware and software configuration, offer information for a user of a respective terminal device;

displaying, in the context of an interactive menu in the respective terminal device, the offer information together with one of a select and a reject request, one of a request and a reject signal of the user which is generated by the user being registered;

transmitting, together with the offer information, charging mode signals to the respective terminal device and displaying the charging mode signals in the context of the interactive menu for selection by the user, and registering a charging mode in the central server in response to a selection made by the user; and

downloading onto the respective terminal device by the central server, in response to the registered one of the request and the reject signals, at least one of software and data that are suitable for the respective terminal device and that are not already present at the respective terminal device.

Claim 16. A method of operating a telecommunication network as claimed in claim 15, the method further comprising the step of: transferring to the central server, when one of the plurality of terminal devices log onto the telecommunication network, at predetermined times, and at time intervals, software and data that is implemented in the plurality of terminal devices for the purpose of data storage, and transferring the software and data by the central server back to the plurality of terminal devices again upon the occurrence of a predetermined condition.

Claim 17. A method of operating a telecommunication network as claimed in claim 15, the method further comprising the steps of: storing at least one of the reject signals and the request signals in the central server for each individual terminal device; and generating subsequent offer information using the at least one of the stored reject signals and the stored request signals as a filter.

Claim 18. A method of operating a telecommunication network as claimed in claim 15, the method further comprising the step of: using the central server as an intermediate station in the loading of software and data onto a first of the plurality of terminal devices by one of a second of the plurality of terminal devices in the telecommunication network and a data terminal device in a data network that is linked to the telecommunication network.

Claim 19. A method of operating a telecommunication network as claimed in claim 15, the method further comprising the steps of: storing at least one of validity data and authorization data in the central server in association with predetermined configuration codes; comparing the data to configuration codes that are transmitted by the plurality of terminal devices; and outputting to the plurality of terminal devices, as a result of the comparison, data relating to at least one of the validity of software and data stocks that are stored in the plurality of terminal devices and the usage authorization of the respective user.

Claim 20. A method of operating a telecommunication network as claimed in claim 15, the method further comprising the step of: evaluating in the central server, when at least one of a terminal device logs on, predetermined times occur, and time intervals occur, counter statuses of application counter elements of the software and data stocks that are implemented in the plurality of terminal devices for the purpose of performing a use-based charging, an evaluation result being transmitted to the plurality of terminal devices.

Claim 21. A terminal device for use in a telecommunication network having a plurality of terminal devices of users, each with a predetermined hardware and software

configuration, and a central server of an accessor service provider, the terminal device comprising: a response transmitting part for transmitting a configuration code that identifies a currently implemented hardware and software configuration to the central server in response to an interrogation by the central server; distributed control parts for implementing an interactive control of the downloading of at least one of software and data from the central server; a charging mode display part for displaying at least one available charging mode for one of offered and selected software and data; and a charging mode confirmation part for specifying the charging mode.

Claim 22. A terminal device for use in a telecommunication network as claimed in claim 21, wherein the distributed control parts include an offer display part for displaying offer information that is transmitted by the central server and a requesting part for selecting at least one of software and data that is offered for downloading for the purpose of outputting at least one of a request signal and reject signal to the central server.

Claim 23. A terminal device for use in a telecommunication network as claimed in claim 21, wherein the distributed control parts include signaling parts based on at least one of SIM cards, firmware, and applets/scripts.

Claim 24. A terminal device for use in a telecommunication network as claimed in claim 21, further comprising: operating data transmitting and receiving parts for transferring at least one of software and data to and from the central server.

Claim 25. A terminal device for use in a telecommunication network as claimed in claim 21, further comprising: an auxiliary information reception and display unit for receiving and displaying messages that are transmitted on the central server side relating to at least one of the validity of software and data that are implemented in the terminal device, the usage authorization, and a use-based charge status.

EVIDENCE APPENDIX

EXHIBIT A: Office Action dated February 22, 2006

EXHIBIT B: *Kobata* (U.S. Patent No. 4,540,585), cited by the Examiner in the Office Action dated February 22, 2006

EXHIBIT C: *Nakagawa* (U.S. Patent 5,835,911), cited by the Examiner in the Office Action dated February 22, 2006

EXHIBIT D: *Chen et al.* (U.S. 5,797,016), cited by the Examiner in the Office Action dated February 22, 2006

EXHIBIT E: *Valentine* (U.S. 6,018,654), cited by the Examiner in the Office Action dated February 22, 2006

EXHIBIT F: *Pepe et al.* (U.S. Patent 5,742,668), cited by the Examiner in the Office Action dated February 22, 2006

EXHIBIT G: *Shear* (U.S. Patent 4,977,594), cited by the Examiner in the Office Action dated February 22, 2006

EXHIBIT h: *Shah* (U.S. Patent 6,029,065), cited by the Examiner in the Office Action dated February 22, 2006

**** NOTE - EVIDENCE WAS SUBMITTED AND ACCEPTED BY THE USPTO ON SUBMISSION OF APPEAL BRIEF DATED SEP. 1, 2006**

RELATED PROCEEDINGS APPENDIX

None